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I. Overview of the Executive Office for Immigration Review

The fight against terrorism remains the top enforcement priority of the Department of Justice and the Administration. A key component of this effort is the securing of our Nation's borders. More than ever, protecting America requires a multifaceted strategy which must include the effective coordination of investigative, enforcement, legal and adjudicative resources, both within the Department and in concert with other agencies. The application and enforcement of our immigration laws remains a critical element of this national effort.

1. Introduction

On March 1, 2003, the Immigration and Naturalization Service was abolished, its functions transferred to the new Department of Homeland Security (DHS). However, the Attorney General retained significant authority over the interpretation and application of the Nation's immigration laws. As such, the immigration adjudications and litigation functions remained within the Department of Justice.

The Department's adjudication of immigration cases is performed by the Executive Office for Immigration Review (EOIR).

On behalf of the Attorney General and exercising his delegated authority, the mission of EOIR is to provide the timely and uniform interpretation and application of immigration law, ensuring due process and fair treatment for all parties involved.

The Administrative Review and Appeals FY 2011 request is \$319,220,000 1,698 positions and 1,674 FTE workyears. The request is offset by \$4,000,000 to be transferred to EOIR from Immigration Examination Fees collected by the DHS. This request includes \$316,442,000, 1,683 positions and 1,659 FTE for EOIR and \$2,778,000, 15 positions and 15 FTE for the Office of the Pardon Attorney (OPA).

The EOIR request includes a total program increase of \$10,866,000 tied primarily to the priority Immigration and Southwest Border Initiative, as delineated below:

Immigration and Southwest Border Initiative: \$11.0 million, including 125 positions (31 Attorneys) to add 21 Immigration Judge Teams and 10 Board of Immigration Appeals attorneys. This increase is necessary to effectively respond to DHS' increased implementation of the Secure Communities Initiative. Secure Communities expands and revolutionizes the existing DHS Criminal Alien Program, in which EOIR has played a key role by adjudicating cases, including those of aliens incarcerated in federal, state and local prisons and jails. Using biometric identification capabilities, Secure Communities is deployed in over 100 jurisdictions, with DHS planning 190 additional jurisdictions in 2010, and 900 additional in 2011.

The FY 2011 current services for this initiative are 1,558 positions and \$305.5 million, including the additional 28 Immigration Judge Teams and 10 Board of Immigration Appeals attorneys received in the FY 2010 enacted budget.

Travel Management Efficiencies Decrease (\$173,000): The Department is continually evaluating its programs and operations with the goal of achieving across-the-board economies of scale that result in increased efficiencies and cost savings. In FY 2011, DOJ is focusing on travel as an area in which savings can be achieved. For EOIR, travel or other management efficiencies will result in offsets of \$173,000. This offset will be applied in a manner that will allow the continuation of effective law enforcement program efforts in support of Presidential and Departmental goals, while minimizing the risk to health, welfare and safety of agency personnel.

EOIR includes 58 immigration courts located nationwide, the Board of Immigration Appeals (BIA or Board), which hears appeals of immigration judge decisions and certain decisions of officers of the DHS, and an administrative law judge function, which adjudicates other immigration-related matters.

While due process and independent decision-making remain the bedrock of any judicial or quasi-judicial function, EOIR cannot and does not operate in a vacuum. The volume, nature, and geographic concentration of DOJ/EOIR immigration caseload relates to government-wide immigration enforcement efforts. The coordination of resource allocation with DHS remains EOIR's top challenge and remains a critical goal.

An assessment of EOIR's program was conducted in 2006 and resulted in an improvement plan that was executed during the next several years. The improvement plan's first action item was completed when EOIR reassessed its targets to ensure that they were suitably ambitious. While most measures were determined to be suitably ambitious, the BIA did shorten the time frame for completion of detained cases from 180 days to 150 days. The second action item, which concerns the implementation of digital audio recording (DAR), is well underway.

DAR continues to improve the quality of transcriptions and enhance efficiency in the flow of records between the immigration courts, transcription contractors, and the Board. Currently, DAR is available in 111 courtrooms nationwide and implementation will continue until complete.

The third action item involves expanded training for immigration judges and Board legal staff, which began in FY 2007 with the revision of numerous legal references materials. In 2008, EOIR expanded training for new immigration judges and BIA members to include intensive classroom training on law and procedures; two weeks of observation; and, two weeks of on-the-job training in an immigration court. Periodic training was also conducted on legal and procedural issues for immigration judges and Board members. EOIR developed an expanded training program for immigration judges and Board legal staff, including the provision of comprehensive reference materials, to ensure that staffs receive continuing education on immigration issues. The agency's efforts in this regard will continue into the future. The fourth action item is to expand the Legal Orientation Program by six sites, improving efficiencies in immigration court proceedings for detained aliens by increasing their awareness of their rights and the process. This action item was accomplished during 2008 and 2009.

Office of the Pardon Attorney

For FY 2011, OPA requests no program increases but seeks a current services level of 15 FTE, 15 positions, and \$2,778,000 to achieve its mission of advising and assisting the President in the exercise of the pardon power conferred upon him by Article II, Section 2 of the Constitution. This request includes total adjustments to base (ATB's) of \$48,000. With these additional resources, OPA will be able to continue to provide the President with timely and well-reasoned advice on matters of executive clemency. Electronic copies of the Department of Justice's Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet using the Internet address:

http://www.usdoj.gov/jmd/2011justification/.

OPA is not requesting any enhancements for information technology for FY 2011. As a small component operating in leased space, OPA is not in a position to develop large-scale environmental accountability programs. The office does, however, attempt to conserve resources by utilizing double-sided printing, purchasing supplies made of recycled materials, and recycling materials used within the office.

2. Background

Immigration Courts and Coordination with DHS Enforcement Increases

EOIR's immigration courts represent the Department's front-line presence with respect to the application of immigration law. Cases are received on-site, across the Nation, directly from DHS enforcement personnel. As such, the coordination of resource allocation between DOJ/EOIR and DHS is a critical issue.

The strategies employed by EOIR to respond to this issue are twofold. First, on an on-going basis, EOIR's Office of the Chief Immigration Judge monitors caseload volume, trends and geographic concentration and adjusts resource allocation accordingly. This is done by modifying local dockets, adjusting detail assignments and permanently reassigning judge and staff positions to higher volume courts. This strategy involves close national and local coordination with DHS immigration enforcement personnel.

EOIR's second strategy involves coordinating initiatives with DHS. Within DHS, Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) include the majority of immigration enforcement programs which generate immigration court caseload.

ICE includes immigration detention and removal, intelligence, investigations, legal proceedings and criminal alien programs. CBP includes the Border Patrol and inspections programs. Increases to these DHS programs have had, and will continue to have, an immediate and profound effect upon DOJ/EOIR adjudications. As a key player in the government's immigration initiatives, EOIR's ability to adjudicate increasing caseload in a timely fashion allows the larger system to operate more efficiently, including the effective utilization of increased detention bed spaces and the DHS resources devoted to criminal and non-criminal alien removal programs.

For years, EOIR's top funding priority has been to attain the ability to adjudicate the record numbers of cases already received as a result of increased DHS enforcement, and to meet the adjudications challenges resulting from new DHS enforcement initiatives.

EOIR and DOJ Strategic Goals

EOIR has been included in the DOJ Strategic Plan for FY 2007 - FY 2012 under Strategic Goal 3: Ensure the fair and efficient administration of Justice, Objective 3.5: Adjudicate all immigration cases promptly and impartially in accordance with due process.

While it is recognized that EOIR's primary mission is not tied directly to DOJ's counterterrorism strategic goals, DHS' immigration enforcement programs, the main source of EOIR's caseload, represent a critical component of counterterrorism initiatives. Further, the Attorney General's authorities with respect to the application and interpretation of immigration law clearly impact government-wide enforcement strategies. As such, EOIR remains important in regard to DHS/DOJ enforcement efforts.

3. Full Program Costs

EOIR's submission contains specific performance measures, including those identified in the Departmental Performance Plan and Report. The measures are comprised of performance targets related to criminal alien, detained alien, and asylum caseloads. EOIR will continue to strive to meet the targets. All costing methodologies, including modular costs, are reflected in the attached financial exhibits.

4. Performance Challenges

EOIR's challenges are of an internal and external nature. Externally, budget proposals generally reflect collaboration with DHS to best address workload projections or, in the case of IT projects, to establish systems which facilitate interagency effectiveness. EOIR receives virtually all of its workload in the form of cases brought forth by DHS, challenging the legal status and seeking the removal of aliens. The importance of effectively planning and coordinating with DHS, as their enforcement programs increase, cannot be overstated.

EOIR's immigration court caseload has continued to increase as a result of DHS' heightened enforcement efforts. This remains the key challenge for EOIR as courts continue to receive hundreds of thousands of matters for adjudication. In 2007, immigration courts received 336,000 matters for adjudication. During 2008, that number rose to over 352,000 matters. For 2009, EOIR received nearly 390,000 matters. As a consequence, court case backlogs have continued to increase, e.g., from 190,835 matters pending at the start of 2009 to nearly 230,000 pending at the end of 2009. In addition, court dockets have been stretched unacceptably far into the future, e.g., over 20 courts are scheduled at least a year into the future (13 courts have cases scheduled well into 2011 and, in some cases, 2012).

It is anticipated that the current and planned expansion of DHS enforcement efforts will continue to increase immigration court case receipts well into the future. Most notably, EOIR is working closely with DHS as they greatly expand their Secure Communities initiative, a program which will directly impact EOIR court operations.

To date, DHS has deployed Secure Communities programs to 95 local jurisdictions. DHS is planning to add an additional 190 jurisdictions in 2010, and over 900 additional jurisdictions by 2011.

BIA's mission is to provide timely guidance and interpretation of immigration law. The sustained level of over 30,000 appeals per year is an extremely large volume for any appellate body.

II. Summary of Program Changes

| Item Name | Description | | | | Page |
|----------------|---|------|-----|--------------------|------|
| | | Pos. | FTE | Dollars (\$000) | |
| Strategic Goal | | | | | |
| 3.5 | Immigration and Southwest Border Initiative | 125 | 63 | \$11,039 | 20 |

The EOIR request includes a total program increase of \$11,039,000 tied primarily to the priority Immigration and Southwest Border Initiative, as delineated below:

Immigration and Southwest Border Initiative: \$11.0 million, including 125 positions (31 Attorneys) to add 21 Immigration Judge Teams and 10 Board of Immigration Appeals attorneys. This increase is necessary to effectively respond to DHS' increased implementation of the Secure Communities Initiative. Secure Communities expands and revolutionizes the existing DHS Criminal Alien Program, in which EOIR has played a key role by adjudicating cases, including those of aliens incarcerated in federal, state and local prisons and jails. Using biometric identification capabilities, Secure Communities is deployed in over 100 jurisdictions, with DHS planning 190 additional jurisdictions in 2010, and 900 additional in 2011.

The FY 2011 current services for this initiative are 1,558 positions and \$305.5 million, including the additional 28 Immigration Judge Teams and 10 Board of Immigration Appeals attorneys received in the FY 2010 enacted budget.

III. Appropriations Language and Analysis of Appropriations Language

Appropriations Language

For expenses necessary for the administration of pardon and clemency petitions and immigration-related activities, [\$300,685,000], <u>\$319,220,000</u>, of which \$4,000,000 shall be derived by transfer from the Executive Office for Immigration Review fees deposited in the "Immigration Examinations Fee" account. (Department of Justice Appropriations Act, 2010.)

Analysis of Appropriations Language

No substantive changes.

IV. Decision Unit Justification

A. Executive Office for Immigration Review (EOIR)

| EOIR TOTAL | Perm. | FTE | Amount |
|---|-------|-------|---------|
| | Pos. | | |
| 2009 Enacted with Rescissions | 1,386 | 1,424 | 267,613 |
| 2009 Supplementals | 0 | 0 | 0 |
| 2009 Enacted w/Rescissions and Supplementals | 1,386 | 1,424 | 267,613 |
| 2010 President's Budget | 1,558 | 1,510 | 297,955 |
| Adjustments to Base and Technical Adjustments | 0 | 86 | 7,621 |
| 2011 Current Services | 1,558 | 1,596 | 305,576 |
| 2011 Program Increases | 125 | 63 | 11,039 |
| 2011 Program Offsets | 0 | 0 | -173 |
| 2011 Request | 1,683 | 1,659 | 316,442 |
| Total Change 2010-2011 | 125 | 149 | 18,487 |

| EOIR—Information Technology Breakout (of | Perm. | | |
|---|-------|-----|---------|
| Decision Unit Total) | Pos. | FTE | Amount |
| 2009 Enacted with Rescissions | 23 | 23 | 33,902 |
| 2009 Supplementals | 0 | 0 | 0 |
| 2009 Enacted w/Rescissions and Supplementals | 23 | 23 | 33,902 |
| 2010 President's Budget | 26 | 26 | 39,152 |
| Adjustments to Base and Technical Adjustments | 0 | 0 | (7,175) |
| 2011 Current Services | 26 | 26 | 31,977 |
| 2011 Program Increases | 0 | 0 | 0 |
| 2011 Request | 26 | 26 | 31,977 |
| Total Change 2010-2011 | 0 | 0 | (7,175) |

1. Program Description

The EOIR is comprised of the Office of the Director and three adjudicative components.

<u>Board of Immigration Appeals</u> – Under the direction of the Chairman, the BIA hears appeals of decisions of immigration judges and certain decisions of officers of the DHS in a wide variety of proceedings in which the Government of the United States is one party and the other party is an alien, a citizen, or a transportation carrier. The BIA is directed to exercise its independent judgment in hearing appeals for the Attorney General, and provides a nationally uniform application of the immigration laws, both in terms of the interpretation of the law and the exercise of the significant discretion vested in the Attorney General. The majority of cases before the BIA involve appeals from orders of EOIR's immigration judges entered in immigration proceedings.

Appeals of decisions of DHS officers, reviewed by the BIA, involve principally appeals from familial visa petition denials and decisions involving administrative fines on transportation carriers. The BIA also renders decisions on applications by organizations that have requested permission to practice before the BIA, the immigration judges, and DHS, and renders decisions on individual applications by employees of such organizations.

The BIA mission requires that national policies, as reflected in immigration laws, be identified, considered, and integrated into its decision process. The BIA plays the major role in interpreting the immigration laws of this country, an area of law the courts have characterized as uniquely complex. Processing a high-volume caseload has been a challenging task in a time of almost constant major legislative action in the immigration field. The BIA has provided the principal interpretation of the Immigration Reform Control Act of 1986 (IRCA); the Immigration Amendments of 1988; the Anti-Drug Abuse Act of 1988; the Immigration Act of 1990 (IMMACT 90); the Anti-terrorism and Effective Death Penalty Act of 1996 (AEDPA); the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA); the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA); the Legal Immigration Family Equity Act of 2000 (LIFE); and, the LIFE Act Amendments of 2000. These laws have represented the most fundamental restructuring of the Immigration and Nationality Act since its enactment in 1952, and have presented a myriad of new issues of statutory construction. The BIA has issued interpretive decisions and has then reinterpreted the Act as the laws have been redrafted.

Office of the Chief Immigration Judge – The Chief Immigration Judge provides overall program direction, articulates policy, and establishes priorities for the immigration judges located in 58 courts throughout the United States. Generally, immigration judges may order aliens removed or grant relief such as cancellation of removal, suspension of deportation, adjustment of status, asylum or waivers of removability. If the immigration judges decide that removability has not been established, they may terminate the proceedings. Bond redetermination hearings are held when an alien in custody seeks release on his or her own recognizance, or a reduction in the amount of bond.

With respect to criminal alien adjudications, the Institutional Hearing Program (IHP) provides the framework for hearings to determine the immigration status of aliens convicted of offenses who are incarcerated in federal, state and local prisons across the United States. EOIR's IHP is part of the larger Institutional Removal Program, also known as the Criminal Alien Program, operated by the DHS. This program is a central component of a variety of initiatives designed to expedite the removal of criminal aliens and involves close coordination with DHS, the Bureau of Prisons, state and local corrections authorities, and EOIR.

Office of the Chief Administrative Hearing Officer – The Office of the Chief Administrative Hearing Officer (OCAHO) employs Administrative Law Judges (ALJs) appointed pursuant to 5 U.S.C. 3105 to adjudicate cases arising under Sections 274A, 274B and 274C of the Immigration and Naturalization Act (INA). Section 274A provides for sanctions against employers or entities who: (1) knowingly hire, recruit, or refer for a fee, or continue to employ unauthorized aliens; (2) fail to comply with the employment verification system; or (3) require the execution of an indemnity bond to protect themselves from potential liability for unlawful employment practices. Section 274 B prohibits employment discrimination based on national origin or citizenship status and provides for civil penalties and various remedies. Section 274C provides civil penalties for immigration-related document fraud. Adjudicative proceedings are initiated by complaints filed with the OCAHO and subsequently assigned to ALJs by the Chief Administrative Hearing Officer (CAHO). Complaints are filed by the DHS in section 274A and Section 274C cases and by the Office of Special Counsel (OSC) for Immigration Related Unfair Employment Practices in section 274B cases or by the aggrieved party if OSC declines to file a complaint.

The CAHO may conduct administrative review and, unless the case is certified to the Attorney General, take the final agency action with respect to cases decided by ALJs under Sections 274A and 274C. The CAHO also certifies ALJs who hear Section 274B cases having received the training in employment discrimination matters as required by statute.

PERFORMANCE AND RESOURCES TABLE

Decision Unit: Executive Office for Immigration Review

DOJ Strategic Goal/Objective 3.5 Adjudicate all immigration cases promptly and impartially in accordance with due process

| WORKLOAD/ RES | SOURCES | Final | Target | Ac | tual | Proj | ected | | Changes | Reque | sted (Total) |
|---------------------------------|---|-------|----------------------|-------|----------------------|----------------|-----------------------|-------------|--|-------------------|-------------------------|
| | | | | FY | FY 2009 | | FY 2010 Enacted | | rent Services ents and FY 2011 gram Changes | FY 20 | 11 Request |
| | ation Court Matters Received Received at BIA | | 7,808 ,048 | | ,352 ,798 | | 7,808 ,048 | | 20,000 2,000 | 417,808 39,048 | |
| Total Costs and FT | | FTE | \$000 | FTE | \$000 | FTE | \$000 | FTE | \$000 | FTE | \$000 |
| * | are included, but reimbursable and not included in the total) | 1,424 | 267,613 | 1,424 | 267,581 | 1,510 | 297,955 | 149 | 18,487 | 1,659 | 316,442 |
| TYPE/ STRATEGIC OBJECTIVE | PERFORMANCE | FY | 2009 | FY | 2009 | FY 2010 |) Enacted | Adjustm | Current Services Adjustments and FY 2011 Program Changes | | 11 Request |
| Program Activity | 3.5 Adjudicate Immigration Cases | FTE | \$000 | FTE | \$000 | FTE | \$000 | FTE | \$000 | FTE | |
| | | 1,424 | 267,613 | 1,424 | 267,581 | 1,510 | 297,955 | 149 | 18,487 | 1,659 | 316,442 |
| Performance | Immigration Courts | | | | | | | | | | |
| Measure | Total Matters Completed Total Proceedings Completed Expedited Asylum Completions (Discontinued) | 281 | ,364 ,732 ,524 | 289 | ,234 9,339 503 | 298 | 9,364 8,732 J/A | | 34,000 28,000 N/A | | 93,364 26,732 N/A |
| | IHP Completions Detained Completions w/out Apps. (Discontinued) | | 1,420 5,232 | | 311 7,391 | | 5,420 N/A | | 1,000 N/A | | 6,420 N/A |
| | Total immigration court priority cases completed (Discontinued) | | ,176 | | ,305 | | I/A | N/A | | | N/A |
| | Backlog of pending court cases filed prior to FY04 (Discontinued) New: Detained Completions | 0 | | | 0 763 | N/A 152,458 | | N/A New# | | N/A New# | |
| Performance | Board of Immigration Appeals | | | | , | 102 | , | | | | |
| Measure | Total Appeals Completed Detained Completions | , | .132 .860 | , | .030 .243 | | ,632 3,860 | | 4,100 1,000 | | 7,732 4,860 |

| | | Final Target FY 2009 | Actual FY 2009 | Projected FY 2010 Enacted | Changes | Requested (Total) FY 2011 Request |
|-----------------------|---|-------------------------|-------------------|------------------------------|---------|--------------------------------------|
| | Total Appeal priority cases completed (Discontinued) | 2,860 | 3,243 | N/A | N/A | N/A |
| Efficiency Measure | The measures above also serve as EOIR's efficiency measures | | | | | |
| OUTCOME | Immigration Courts | 000/ | 930/ | NI/A | | NI/A |
| | % Exp Asylum Cases within Time Goal (Discontinued) | 90% | 82% | N/A | | N/A |
| | % IHP Cases within Time Goal | 90% | 90% | 85% | | 85% |
| | % Detained Cases within Time Goal | 90% | 88% | 85% | | 85% |
| | % Immigration Court priority cases (Discontinued) | 90% | 88% | N/A | | N/A |
| | % Backlog reduction (Discontinued) | 50% | 50% | N/A | | N/A |
| | Board of Immigration Appeals | | | | | |
| | % Detained Cases Adjudicated within | 90% | 96% | 90% | | 90% |
| | Time Goal % Appeal priority cases completed | 90% | 96% | | | |
| | (Discontinued) | 2070 | 73/0 | N/A | | N/A |

| Performance Repo | ort and Performance Plan Targets | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 20 | 009 | FY 2010 | FY 2011 |
|------------------|---|---------|---------|---------------|---------------|---------|---------|---------|---------|---------|---------|
| | | Actual | Actual | Actual | Actual | Actual | Actual | Target | Actual | Target | Target |
| *Performance | Total Matters Completed | 296,494 | 301,203 | 352,000 | 365,851 | 327,300 | 338,341 | 339,364 | 351,234 | 359,364 | 393,364 |
| Measures | Total Proceedings Completed | 250,763 | 258,946 | 314,000 | 323,000 | 272,000 | 280,382 | 281,732 | 289,339 | 298,732 | 326,732 |
| | Expedited Asylum Completions (Discontinued) | 50,017 | 47,078 | 43,000 | 27,000 | 21,200 | 12,698 | 7,524 | 7,603 | N/A | N/A |
| | IHP Completions | 7,696 | 7,835 | 9,000 | 5,600 | 6,000 | 5,525 | , | 4,311 | 5,420 | 6,420 |
| | Detained Completions without | 7,090 | 1,033 | 9,000 | 3,000 | 0,000 | 3,323 | 4,420 | 4,311 | 3,420 | 0,420 |
| | Applications (Discontinued) | 58,734 | 58,849 | 59,000 | 64,000 | 87,400 | 100,055 | 106,232 | 107,391 | N/A | N/A |
| | Total immigration court priority cases | | | , , , , , , , | , , , , , , , | , | | , - | , | | |
| | completed (Discontinued) | 116,447 | 113,762 | 111,000 | 96,600 | 114,600 | 118,278 | 118,176 | 119,305 | N/A | N/A |
| | New Detained Completions | | | | | | | | 144,763 | New # | New # |
| *Performance | Total Appeals Completed | 48,060 | 48,711 | 46,300 | 41,400 | 35,400 | 38,296 | 31,132 | 33,030 | 33,632 | 37,732 |
| Measures | Detained Completions | 3,694 | 4,089 | 3,425 | 3,000 | 3,200 | 3,239 | 2,860 | 3,243 | 3,860 | 4,860 |
| Efficiency | The measures above also serve as | | | | | | | | | | |
| Measures | EOIR's efficiency measures | | | | | | | | | | |
| ***OUTCOME | % Expedited Asylum Cases within | | | | | | | | | | |
| Measures | Time Goal (Discontinued) | 91% | 89% | 92% | 95% | 90% | 80% | 90% | 82% | N/A | N/A |
| | % IHP Cases w/in Time Goal | 86% | 88% | 89% | 92% | 86% | 91% | 90% | 90% | 85% | 85% |
| | % Detained w/out Applications w/in | 000/ | 000/ | 010/ | 020/ | 000/ | 000/ | 000/ | 000/ | NT/A | NT/A |
| | Time Goal (Discontinued) % Immigration Court priority cases | 88% | 88% | 91% | 92% | 89% | 90% | 90% | 88% | N/A | N/A |
| | completed (Discontinued) | 89% | 89% | 91% | 93% | 89% | 89% | 90% | 88% | N/A | N/A |
| | % Backlog reduction (Discontinued) | N/A | 59% | 58% | 68% | 43% | 43% | 50% | 50% | N/A | N/A |
| | New: Detained Completions | 14/21 | 3770 | 3070 | 0070 | 4370 | 4370 | 3070 | 3070 | 85% | 85% |
| | | | | | | | | | | 35,0 | 3270 |
| **OUTCOME | % Detained Appeals Adjudicated | | | | | | | | | | |
| Measures | within Time Goal | 81% | 91% | 92% | 97% | 97% | 96% | 90% | 96% | 90% | 90% |
| | % Appeals priority cases completed | | | | | | | | | | |
| | (Discontinued) | 81% | 91% | 92% | 97% | 97% | 96% | 90% | 96% | N/A | N/A |

N/A = Data unavailable. The performance measures and outcome measures for which data are unavailable are either new measures implemented in FY 2010, or measures that have been discontinued.

^{*}Completion figures (in the Performance Measures rows) are not targets, but rather projected completions for fiscal years 2010 – 2011. EOIR's targets are the percentages shown in the OUTCOME Measures row.

^{**}Denotes inclusion in the DOJ Performance and Accountability Report

^{***}The Expedited Asylum and Detained Completions without Applications were discontinued as of the end of FY 2009.

2. Performance, Resources, and Strategies

Resources from EOIR contribute to the achievement of the Department's Strategic Goal 3: Ensure the fair and efficient administration of justice. Within this Goal, EOIR's resources specifically address the Department's Strategic Objective 3.5: Adjudicate all immigration cases promptly and impartially in accordance with due process.

In addition, the unique relationships between EOIR adjudications programs and DHS immigration enforcement programs, contribute to Strategic Goal 1: Prevent Terrorism and Promote the Nation's Security.

Resources from OPA contribute to the achievement of the Department's Strategic Goal 2: Prevent Crime, Enforce Federal Laws and Represent the Rights and Interests of the American People. Within this Goal, OPA's resources specifically address the Department's Strategic Objective 2.7: Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction.

a. Performance Plan and Report for Outcomes

As illustrated in the preceding Performance Measure Table, EOIR's priority is its detained caseload. For the FY 2011 targets, EOIR has shifted its measures to reflect the new priority.

For the immigration courts, EOIR chose two priority case types as performance measures and set the following goals:

- 85% of Institutional Hearing Program (criminal alien cases) completed before release from incarceration
- 85% of detained cases completed within 60 days

In FY 2009, the immigration courts met its old target regarding Institutional Hearing Program (IHP) cases. The detained case target was narrowly missed, but the completion rate was still an accomplishment due to the dramatic increase in the detained caseload. The expedited asylum case target was missed in part due to the high number of immigration judge vacancies. Additionally, the courts missed that goal because of the courts' focus on the detained caseload.

The performance measure for the BIA is:

• 90% of detained appeals adjudicated within 150 days

In FY 2009, the BIA exceeded this target by 6% and expects to exceed it again in FY 2010. This performance measure will continue in FY 2011.

EOIR's adjudication functions are part of the government's broader immigration and border control programs. As such, EOIR's ability to adjudicate cases in a timely fashion allows the larger system to operate more efficiently. This includes the efficient utilization of DHS detention bed spaces. The guarantee of fairness and due process remains a cornerstone of our judicial system. EOIR's role in the provision of relief in meritorious cases, and in the denial of relief in others, helps assure the integrity of the overall process.

To summarize, the FY 2011 target is to complete EOIR's priority adjudications within established timeframes.

b. Strategies to Accomplish Outcomes

Case adjudication is the performance indicator for EOIR. Performance measures (the number of cases completed) have been established for several high priority case types.

EOIR has established case completion goals for the various types of cases that the immigration courts adjudicate, and will continue to reallocate existing resources to the adjudication of priority cases. This includes the adjustment of court dockets to increase the number of calendars devoted to detained cases and increasing the frequency of immigration judge details to federal, state, and local correctional facilities as needed to adjudicate Institutional Hearing Program cases.

Finally, EOIR is moving ahead with its plans to transition from paper to electronic records. When fully implemented, this initiative will improve efficiency throughout the adjudication process, and a higher percentage of EOIR's cases will be adjudicated within target time frames. For example, data from electronically filed documents will be automatically uploaded to EOIR's database, thus decreasing data entry time; electronic Records of Proceedings (ROPs) will be available for simultaneous access by staff who need to use them, eliminating the time spent waiting for files; and digitally recorded hearings can be made available to transcribers instantly rather than mailing audio tapes back and forth.

B. Office of the Pardon Attorney

| Office of the Pardon Attorney TOTAL | Perm. | FTE | Amount |
|---|-------|-----|--------|
| | Pos. | | |
| 2009 Enacted with Rescissions | 15 | 15 | 2,387 |
| 2009 Supplementals | 0 | 0 | 0 |
| 2009 Enacted w/Rescissions and Supplementals | 15 | 15 | 2,387 |
| 2010 Enacted | 15 | 15 | 2,730 |
| Adjustments to Base and Technical Adjustments | 0 | 0 | 48 |
| 2011 Current Services | 15 | 15 | 2,778 |
| 2011 Program Increases | 0 | 0 | 0 |
| 2011 Request | 15 | 15 | 2,778 |
| Total Change 2010-2011 | 0 | 0 | 48 |

1. Program Description

The Office of the Pardon Attorney, in consultation with the Deputy Attorney General, assists the President, through the Office of the Counsel to the President, in the responsible exercise of the executive clemency power. The primary function of OPA is to receive, review, and, if appropriate, investigate clemency applications and to prepare the recommendation of the Department of Justice to the President as to the appropriate disposition of each application. In addition, OPA responds to inquiries concerning clemency petitions and the clemency process from applicants, their representatives, members of the public, Members of Congress, and various federal, state, and local officials and agencies, and prepares all necessary documents to effect the President's decision to grant clemency. When asked to do so, OPA also provides general advice to the White House concerning clemency procedures and the historical background of clemency matters. The procedures governing OPA's duties are described in regulations promulgated by the President and published in 28 CFR §§ 1.1 to 1.11. The work of OPA is performed under the direction of the Deputy Attorney General, and the information gathered during the clemency review process forms the basis for the report and recommendation that OPA prepares in each case for the signature of the Deputy Attorney General.

OPA has no control over the numbers of clemency petitions that are submitted to it for processing and consideration by the President. Between FY 1990 and FY 1998, OPA averaged 572 new filings per year. In every fiscal year since FY 1999, however, OPA has received over 1,000 clemency applications for processing. In FY 2008, OPA received 555 petitions for pardon and 1,770 petitions for commutation (reduction) of sentence, for a total of 2,325 clemency petitions. At the time, this was the highest number of petitions submitted in any fiscal year since 1900. In FY 2009, however, OPA received 666 pardon petitions and 1,955 commutation petitions, for a total of 2,621 clemency requests -- surpassing the previous record set in FY 2008. In its effort to meet this unprecedented volume of case filings while several of its permanent positions were unfilled for budgetary reasons, OPA during FY 2008 and FY 2009 made substantial use of the assistance of a detailed attorney, eight volunteer legal interns, and two part-time employees. Although these short-term staffing solutions enabled OPA to meet the immediate challenge posed by the huge volume of clemency filings submitted in FY 2008 and 2009, such temporary measures are not well suited to handling the caseload OPA faces in the long term and are no substitute for a fully staffed office of permanent employees.

Given the burgeoning federal prison population, the elimination of other possibilities of release such as parole, and the variety of federal crimes subject to mandatory minimum sentences, the numbers of federal prisoners seeking release through requests for commutation of sentence have skyrocketed over the last decade, and they are expected to remain high for the foreseeable future. Applications for pardon have increased in the last several years as well, in part because a presidential pardon is currently the only means by which a federally convicted felon can regain federal firearms rights lost by reason of conviction. The sheer volume of petitions is not the only challenge OPA faces in carrying out its mission, however. Because significant numbers of the clemency applications submitted to OPA in recent years have involved complex facts and difficult legal issues or have generated widespread but uninformed media and public interest, many of the letters of advice prepared for the President's consideration have of necessity become more detailed than was common a decade ago.

In the mid-1990's, when OPA typically received approximately 600 new cases per year, its staffing was set at 15 FTE. Over the last several fiscal years, the office's staff dwindled through attrition as increases in personnel and other costs and budgetary limitations precluded filling the vacant positions in the office. In FY 2009, OPA's staff included only 11 full-time employees. OPA's budget of \$2,730,000 for FY 2010 was developed to provide sufficient funding to accomplish the long-deferred goal of bringing the office complement back to its full staffing level in order to improve OPA's efficiency and meet its increased workload. The present budget request of \$2,778,000 for FY 2011 is intended to fund current services and permit the office to continue to provide the President with the best information on which to base a fair and just decision in each clemency case.

PERFORMANCE AND RESOURCES TABLE

Appropriation: Administrative Review and Appeals

Decision Unit: Office of the Pardon Attorney

DOJ Strategic Goal 3: Ensure the Fair and Efficient Administration of Justice

| Workload/Reso | ources | Final | Target | A | ctual | Pro | jected | Cha | nges | Request | ed (Total) | | | | |
|-----------------------------------|---|---------------|-------------------------|---------------|-------------------------|---------------|-------------------------|--|---------------------------------|-----------------|-------------------------|--|--|-----|----|
| | | FY 2 | 2009 | FY | 2009 | FY 201 | 0 Enacted | | es Adjustments rogram Change | FY 2011 | Request | | | | |
| Clemency petit | ions pending/received | 4,250 | | 4,250 | | 4,250 | | 4, | 349 | 3 | ,000 | | | 3,3 | 00 |
| Pieces of corre | spondence received | 5.7 | 5,700 | | 5,700 | | 5,700 | | | ** | | | | | |
| Total Costs and (reimbursable FTE | d FTE are included, but reimbursable | FTE | \$000 | FTE | \$000 | FTE | \$000 | FTE | \$000 | FTE | \$000 | | | | |
| costs are brackete | d and not included in the total) | 15 | \$2,387 | 12 | \$2,281 | 15 | \$2,730 | 0 | \$48 | 15 | \$2,778 | | | | |
| TYPE/ STRATEGIC OBJECTIVE | Performance | FY 2 | 2009 | FY | 2009 | 2010 | Enacted | Current Services Adjustments and FY 2011 Program Change | | FY 2011 Request | | | | | |
| Program Activity | Clemency petitions processed | FTE 12 | \$000 \$2,255 | FTE 10 | \$000 \$2,149 | FTE 13 | \$000 \$2,598 | FTE 0 | \$000 \$48 | FTE 15 | \$000 \$2,778 | | | | |
| Performance Measure * | Number of clemency petitions processed by OPA | 1,500 | | 3.135 | | 1,600 | | | | 1,800 | . , | | | | |
| Program Activity ** | Correspondence processed | FTE 3 | \$000 \$132 | -, | \$132 | FTE | \$000 \$132 | FTE | \$000 | FTE | \$000 ** | | | | |
| Performance Measure * | Number of pieces of correspondence processed | 5,700 | \$132 | 5,700 | \$132 | 5,700 | \$132 | 0 | 0 | ** | ** | | | | |
| OUTCOME | Petitions pending at OPA | 1.500 | | 1.214 | | 1,500 | | | | 1,500 | | | | | |

^{*} The Performance Measure is the Efficiency Measure. ** OPA will cease tracking correspondence processing as a separate program activity in FY 2011 since it is an auxiliary function in the clemency case processing mission.

Data Definition, Validation, Verification, and Limitations: OPA's case and correspondence tracking system is updated daily and used extensively to track the status of clemency petitions and correspondence. The data reflected under actual performance is derived from this tracking system and cross-referenced with internal reports to ensure a high degree of accuracy.

PERFORMANCE MEASURE TABLE

Appropriation: Administrative Review and Appeals
Decision Unit: Office of the Pardon Attorney

| Performance Report and Performance Plan Targets | | FY 2002 | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY | 2009 | FY 2010 | FY 2011 |
|---|---|------------|------------|------------|---------|---------|---------|---------|--------|--------|---------|---------|
| | | Actual | Actual | Actual | Actual | Actual | Actual | Actual | Target | Actual | Target | Target |
| Performance Measure | Number of clemency petitions processed | 1,431 | 1,293 | 1,123 | 1,217 | 1,046 | 1,079 | 1,677 | 1,500 | 3,135 | 1,500 | 1,500 |
| Performance Measure | Pieces of correspondence processed | 7,000 | 5,600 | 5,250 | 5,250 | 5,250 | 5,400 | 5,700 | 5,700 | 5,700 | 5,700 | ** |
| Performance Measure | | | | | | | | | | | | |
| Efficiency Measure | The Performance Measure is the Efficiency Measure | | | | | | | | | | | |
| OUTCOME Measure | Petitions pending at OPA | N/A | N/A | N/A | N/A | 904 | 1,080 | 1,728 | 1,500 | 1,214 | 1,500 | 1,500 |

N/A = data unavailable. ** OPA will cease tracking correspondence processing as a separate program activity in FY 2011 since it is an auxiliary function in the clemency case processing mission.

VI. Program Increases by Item

Item Name: <u>Immigration and Southwest Border Initiative</u>

Budget Decision Unit: <u>EOIR</u>

Strategic Goal & Objective: 3.5: Adjudicate all immigration cases promptly and

impartially in accordance with due process.

Organizational Program: <u>Immigration Adjudications</u>

Program Increase: Positions 125 Agt/Atty 31 FTE 63 Dollars \$11,039,000

Description of Item

This request ties directly to DHS enforcement programs, most notably a high priority enforcement initiative currently under development and implementation by ICE/DHS: Secure Communities. EOIR's 125 position increase includes 21 immigration judges, 10 BIA Staff Attorneys and related immigration court and BIA support staff.

The specific threat addressed by this initiative relates to the crimes committed in communities nationwide by illegal aliens. A large subset of the millions of illegal aliens residing in the United States, numbering in the hundred of thousands, commits serious, oftentimes violent crimes. The identification and removal of these criminal aliens is critical to ensuring the safety of our neighborhoods.

Secure Communities is a DHS initiative which leverages extensive coordination with EOIR. In summary, Secure Communities represents a comprehensive initiative developed to identify, prioritize, process, detain, and remove all criminal aliens held in U.S. prisons and jails. Secure Communities builds upon, greatly expands and revolutionizes the existing Criminal Alien Program, in which EOIR has traditionally played a key role with respect to conducting immigration proceedings involving aliens incarcerated in federal, state and local facilities. DHS intends to expand existing programs in federal and state prisons and, most significantly, to eventually introduce criminal alien removal programs in over 3,000 local jails nationwide.

The deployment of the resources included in the EOIR program increase will be made in close coordination with ICE and the affected DOJ components.

Justification

Secure Communities is particularly noteworthy in terms of its affect upon EOIR. This is the case for two primary reasons: ICE has already received initial funding and congressional approval to start the initiative and now has a permanent funding base which will allow continuing expansion; and, the initiative itself leverages extensive coordination with and reliance upon components of DOJ.

ICE received \$200 million in the 2008 Omnibus appropriation (2-year funding) to begin Secure Communities. This included funding for an additional 1,246 detention beds above the 4,500

additional beds included elsewhere in the 2008 Omnibus. An additional \$150 million was appropriated for Secure Communities in 2009, including funds for 1,400 additional beds. Over the years, the detention bed increases alone, both generally and those tied specifically to Secure Communities, would more that justify EOIR's requested increase. For example, in 2005, overall DHS had 18,500 funded beds; by 2009, the number increased to 33,500 beds.

ICE estimates that 300,000 to 450,000 criminal aliens, who are potentially removable, are detained each year in federal, state and local prisons and jails nationwide. By partnering with federal, state, county and local law enforcement, and adding technology to share information between agencies, DHS intends to dramatically increase criminal alien removals.

ICE has delineated four key strategic goals for Secure Communities:

- Strategic Goal 1 Identify and process all criminal aliens amenable for removal while in federal, state and local custody;
- Strategic Goal 2 Enhance current detention strategies to ensure no removable alien is released into the community due to a lack of detention space or an appropriate alternative to detention:
- Strategic Goal 3 Implement removal initiatives that shorten the time aliens remain in ICE custody prior to removal, thereby maximizing the use of detention resources and reducing cost; and,
- Strategic Goal 4 Maximize cost effectiveness and long-term success through deterrence and reduced recidivism.

To date, DHS has deployed Secure Communities to 95 jurisdictions. An additional 190 jurisdictions are planned for 2010, and DHS intends to deploy programs in over 900 additional locations in 2011 and plans for full implementation by 2013.

Secure Communities and the identification and removal of criminal aliens has clearly become a top priority. EOIR's role in expediting the adjudication of removal proceedings involving criminal aliens will play an integral role in the initiative, e.g., by enabling DHS to process those found removable immediately upon completion of their sentences. EOIR's ability to provide timely adjudications will also assist greatly in the efficient use of detention beds, as well as federal, state and local prison and jail space nationwide. As such, EOIR's program increase is made in light of the need to achieve the goals articulated above.

As DHS continues to roll out Secure Communities to counties nationwide, and augments other immigration enforcement programs, EOIR's caseload continues to grow. During FY 2004, immigration courts received less than 300,000 matters for adjudication. That number increased to over 351,000 in 2008. In FY 2009, EOIR received nearly 390,000 immigration court cases. Given the expansion of Secure Communities, EOIR immigration court case receipts will easily top 400,000 annually by 2011.

Impact on Performance (Relationship of Increase to Strategic Goals)

This initiative ties directly to Strategic Goal 3.5 and to the Congress and Administration's immigration priorities. The volume and geographic concentration of the additional caseload will depend upon DHS' implementation strategies. However, the expanded DHS programs in federal, state and local prisons will undoubtedly add cases to EOIR's dockets. Because of their existence in detention and prison settings, these cases will have to be adjudicated expeditiously and as a top priority.

Funding

Administrative Review and Appeals (EOIR & OPA)

Base Funding

| | 09 Enact | ed | | 010 Enac | ted | FY 2011 Current Services | | | | | |
|-------|----------|-------|---------|----------|------|--------------------------|---------|-------|------|-------|---------|
| Pos | agt/ | FTE | \$(000) | Pos | agt/ | FTE | \$(000) | Pos | agt/ | FTE | \$(000) |
| | atty | | | | atty | | | | atty | | |
| 1,401 | 462 | 1,439 | 270,000 | 1,573 | 506 | 1,525 | 300,685 | 1,573 | 506 | 1,611 | 308,354 |

Personnel Increase Cost Summary (EOIR)

| | | Number of | | FY 2012 Net |
|---------------------|----------------------|-----------|-----------------|--------------------|
| Type of Position | Modular Cost | Positions | FY 2011 | Annualization |
| | per Position (\$000) | Requested | Request (\$000) | (change from 2011) |
| | | _ | | (\$000) |
| Immigration Judge | 202 | 21 | 4,242 | 2,418 |
| Language Specialist | 62 | 21 | 1,302 | 764 |
| Legal Technician | 56 | 21 | 1,176 | 679 |
| Clerk | 56 | 21 | 1,176 | 679 |
| Law Clerk | 75 | 21 | 1,575 | 1,123 |
| Attorney | 94 | 10 | 940 | 812 |
| Paralegal | 62 | 10 | 620 | 476 |
| Total Personnel | 607 | 125 | 11,039 | 6,951 |

Non-Personnel Increase Cost Summary (EOIR)

| Non-Personnel Item | Unit Cost | Quantity | FY 2011 Request (\$000) | FY 2012Costs (\$000) |
|-------------------------|-----------|----------|-------------------------|----------------------|
| Total Non- Personnel | N/A | N/A | N/A | N/A |

Total Request for this Item (EOIR & OPA)

| | Pos | Agt/Atty | FTE | Personnel (\$000) | Non- Personnel (\$000) | Total (\$000) |
|------------------|-------|----------|-------|-------------------|------------------------------|------------------|
| Current Services | 1,573 | 506 | 1,611 | 187,956 | 120,398 | 308,354 |
| Increases | 125 | 31 | 63 | 11,039 | -173 | 10,866 |
| Grand Total | 1,698 | 537 | 1,674 | 194,293 | 124,927 | 319,220 |

Program Offsets by Item

Item Name: <u>Travel Management Efficiencies</u>

Budget Decision Unit: <u>EOIR</u>

Strategic Goal & Objective: 3.5: Adjudicate all immigration cases promptly and

impartially in accordance with due process.

Organizational Program: <u>Immigration Adjudications</u>

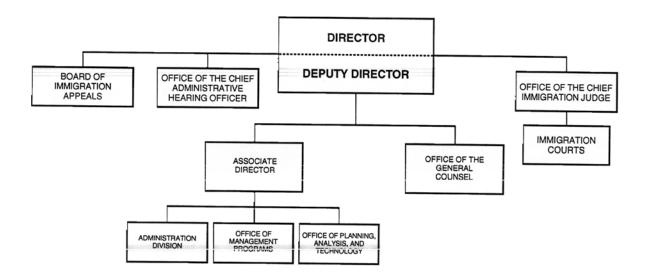
Program Reduction: Positions <u>0</u> Agt/Atty <u>0</u> FTE <u>0</u> Dollars <u>\$(173,000)</u>

Description of Item

The Department is continually evaluating its programs and operations with the goal of achieving across-the-board economies of scale that result in increased efficiencies and cost savings. In FY 2011, DOJ is focusing on travel as an area in which savings can be achieved. For EOIR, travel or other management efficiencies will result in offsets of \$173,000. This offset will be applied in a manner that will allow the continuation of effective law enforcement program efforts in support of Presidential and Departmental goals, while minimizing the risk to health, welfare and safety of agency personnel.

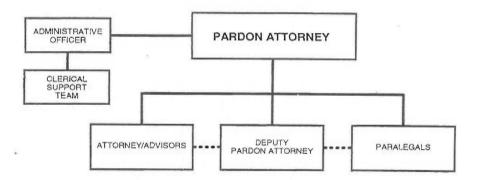
EXHIBITS

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW



Approved by John Ashchoff Attorney General Date November 19, 2004

OFFICE OF THE PARDON ATTORNEY



Approved by JOHN D. ASHCROFT
Alterney General